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1 2 3 4 5 6 7 8	KAMALA D. HARRIS Attorney General of California DIANN SOKOLOFF Supervising Deputy Attorney General SUSANA A. GONZALES Deputy Attorney General State Bar No. 253027 1515 Clay Street, 20th Floor P.O. Box 70550 Oakland, CA 94612-0550 Telephone: (510) 622-2221 Facsimile: (510) 622-2270 Attorneys for Complainant  BEFORE THE BOARD OF REGISTERED NURSING	
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA	
10 11	In the Matter of the Accusation Against: Case No. 2011-723	
12	MICHAEL DOUGLAS REISTAD 1039 Petra Drive	
13	Napa, CA 94559 Registered Nurse License No. 708115  A C C U S A T I O N	
14	Respondent.	
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17	Complainant alleges:	
18	PARTIES  1. J. D. D. H. M. D. L. D. M. G. and Linear Albinous this Association collaboration and all single-single	
19	1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Registered Nursing, Department of	
20	Consumer Affairs.	
22	2. On or about July 19, 2007, the Board of Registered Nursing issued Registered Nursing	se
23	License Number 708115 to Michael Douglas Reistad (Respondent). The Registered Nurse	,,
24	License was in full force and effect at all times relevant to the charges brought in this Accusation	on
25	and will expire on August 31, 2011, unless renewed.	
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Accusation

## **JURISDICTION**

- 3. This Accusation is brought before the Board of Registered Nursing (Board),
  Department of Consumer Affairs, under the authority of the following laws. All section
  references are to the Business and Professions Code unless otherwise indicated.
- 4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.
- 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b), of the Code, the Board may renew an expired license at any time within eight years after the expiration.
- 6. Section 118, subdivision (b), of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

## STATUTORY AND REGULATORY PROVISIONS

7. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

- "(a) Unprofessional conduct, which includes, but is not limited to, the following:
- "(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof."

8. Section 2762 of the Code states:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

. . .

- "(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.
- "(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof."
- 9. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.
  - 10. California Code of Regulations, Title 16, section 1444, states:

"A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare."

## COST RECOVERY

11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

## FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Use of Alcohol in a Dangerous Manner)

(Bus. & Prof. Code §§ 2761, subd. (a), 2762, subd. (b))

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12. Respondent has subjected his registered nurse license to disciplinary action under Code section 2761, subdivision (a), as defined by Code section 2762, subdivision (b), in that he engaged in unprofessional conduct by using alcohol in a dangerous manner. The circumstances are as follows:

- On or about June 7, 2008, the Petaluma Police Department set up a sobriety 13. checkpoint in Petaluma, California to screen traffic on the eastbound side of East Washington Street. The Department also designed a cone pattern to prevent drivers from turning left or right from East Washington Street onto Copeland Street. At approximately 1:00 a.m., one of the police officers working at the checkpoint observed Respondent driving eastbound on East Washington, towards the sobriety checkpoint. As Respondent approached the checkpoint, he entered the cone pattern, began to slow down, and then came to a complete stop. Respondent ran into the cone pattern and then turned left onto Copeland Street, running over two cones in the process. The officer got in his patrol vehicle and followed Respondent onto Copeland Street. Respondent turned off his headlights and taillights and continued driving on Copeland Street. The officer initiated a traffic stop based on Respondent disobeying a cone pattern in violation of Vehicle Code section 2818. The officer approached Respondent and obtained his driver's license, proof of insurance, and registration information. Respondent immediately informed the officer that he drove through the cone pattern because he had consumed alcohol and he was afraid he would lose his nursing license. Respondent stated that he had just left a bar in Petaluma and that he had consumed one beer.
- 14. The officer administered several field sobriety tests to Respondent, which Respondent performed poorly. Respondent submitted to the preliminary alcohol screening device test, which showed that Respondent had a blood alcohol content of .119 percent. Based upon Respondent's objective signs of intoxication and his poor performance on the field sobriety tests, the officer arrested Respondent for driving under the influence of alcohol. The officer advised Respondent

of implied consent and Respondent chose the breath test. Respondent was transported to the Petaluma Police Department checkpoint trailer located at the sobriety checkpoint and Respondent 2 voluntarily submitted to a breath test. The results of the first breath test at 1:26 a.m. showed that 3 Respondent had a blood alcohol content of .10 percent. The results of the second breath test at 4 1:30 a.m. showed that Respondent had a blood alcohol content of .11 percent. 5 SECOND CAUSE FOR DISCIPLINE (Unprofessional Conduct - Conviction) 7 (Bus. & Prof. Code §§ 490, 2761, subd. (f), 2762, subd. (c); Cal. Code Regs, tit. 16, § 1444) 8 15. Complainant realleges the allegations contained in paragraphs 12 through 14 above, 9 and incorporates them by reference as if fully set forth. 10 Respondent has subjected his registered nurse license to disciplinary action under 16. 11 Code sections 490, 2761, subdivision (f), and 2762, subdivision (c), as well as California Code of 12 Regulations Title 16, section 1444, in that he was convicted of a crime involving the consumption 13 of alcohol which is substantially related to the qualifications, functions, and duties of a registered 14 nurse. Specifically, on or about August 14, 2008, in a criminal proceeding entitled The People of 15 the State of California v. Douglas Michael Reistad, in Sonoma County Superior Court, Case 16 Number SCR-539640, Respondent was convicted by plea of no contest to one count of violating 17 Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol level of .08 or more). 18 Respondent was sentenced to three years of probation and two days in jail. Respondent was 19 ordered to pay fees and fines, be of good conduct and obey all laws, submit to random chemical 20 tests, not drive with any alcohol in his system, and complete a First Offender Drinking Program. 21 22 23 24 25 26 27

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17. Respondent has subjected his registered nurse license to disciplinary action under Code section 2761, subdivision (a), as defined by Code section 2762, subdivision (b), in that he engaged in unprofessional conduct by using alcohol in a dangerous manner. The circumstances are as follows:

On or about June 10, 2010, at approximately 9:13 p.m., an officer with the Napa 18. Police Department responded to a report of a hit and run on Oak Knoll Avenue and Big Ranch Road in Napa, California. After being rear-ended by Respondent, the victim of the hit and run followed Respondent's vehicle. When the officer arrived at the scene, Respondent's red Jeep Cherokee was stopped on Oak Knoll Avenue and Respondent was sitting in the driver's seat. As the officer spoke to Respondent, he noticed a strong odor of alcohol and observed that Respondent's eyes were red and watery. The officer administered a series of field sobriety tests to Respondent, which Respondent performed poorly. Respondent consented to a preliminary alcohol screening (PAS). The results of the first PAS test at 9:51 p.m. showed that Respondent had a blood alcohol content of .10 percent. The results of the second PAS test at 9:52 p.m. showed that Respondent had a blood alcohol content of .11 percent. The officer arrested Respondent for driving under the influence and also for hit and run. After waiving his Miranda rights, Respondent told the officer that he did not recall being in an accident. The officer explained to Respondent that the victim of the hit and run reported that he was rear ended by Respondent, and that Respondent fled the scene. Respondent again denied that the accident took place. When asked how his vehicle had sustained damage to the front end, Respondent stated "that's the million dollar question." Respondent told the officer that he had consumed one small bottle of Pacifico beer at 4:30 p.m. Respondent took the evidential portable alcohol system test at 10:26 p.m. and again at 10:29 p.m. The results of both tests showed that Respondent had a blood alcohol content of .11 percent.

(Unprofessional Conduct – Conviction) (Bus. & Prof. Code §§ 490, 2761, subd. (f), 2762, subd. (c); Cal. Code Regs, tit. 16, § 1444)

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Complainant realleges the allegations contained in paragraph 17 and 18 above, and incorporates them by reference as if fully set forth.

Respondent has subjected his registered nurse license to disciplinary action under Code sections 490, 2761, subdivision (f), and 2762 subdivision (c), as well as California Code of Regulations Title 16, section 1444, in that he was convicted of a crime involving the consumption of alcohol which is substantially related to the qualifications, functions, and duties of a registered nurse. Specifically, on or about September 9, 2010, in a criminal proceeding entitled The People of the State of California v. Michael Douglas Reistad, in Napa County Superior Court, Case Number CR 152800, Respondent was convicted by plea of nolo contendre to one count of violating Vehicle Code section 23152, subdivision (b) (driving under the influence with a blood alcohol level of .08 or more), a misdemeanor, with the additional allegation that within ten years of committing that offense, Respondent was convicted of violating Vehicle Code section 23152, subdivision (b). On this same date and in the same matter, Respondent was also convicted by plea of nolo contendre to one count of violating Vehicle Code section 20002, subdivision (a) (failing to stop after being involved in an accident involving damage to property), a misdemeanor. Respondent was sentenced to three years of formal probation and 25 days in jail. Respondent was also ordered to: (1) pay various fees and fines; (2) not operate a vehicle with any measureable amount of alcohol in his blood; (3) submit to a blood, breath, or urine test if requested by any law enforcement officer or probation officer; (4) complete an 18 month drinking driver program; and (5) not operate a motor vehicle for one year unless it is equipped with a functioning, certified ignition interlock device.

1	PRAYER
2	WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
3	Accusation, and that following the hearing, the Board of Registered Nursing issue a decision:
4	1. Revoking or suspending Registered Nurse License Number 708115, issued to
- 5	Michael Douglas Reistad;
6	2. Ordering Michael Douglas Reistad to pay the Board of Registered Nursing the
7	reasonable costs of the investigation and enforcement of this case, pursuant to Business and
8	Professions Code section 125.3;
9	3. Taking such other and further action as deemed necessary and proper.
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12	$2/23/\mu$ $P \cdot (I \cdot A \cdot \mu)$
13 DATED:	LOUISE R. BAILEY, M.ED., RN
14	Executive Officer  Board of Registered Nursing
15	Department of Consumer Affairs State of California
16	Complainant
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